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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 74-244

GARY W. BOOZE, and JOHN W. GANTZER
Petitioners,

v.

THE STATE OF FLORIDA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT OF THE STATE OF FLORIDA

Guillermo A. Ruiz and
Philip J. Padovano, of
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St. Petersburg, Florida
Counsel for Petitioners

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No.

GARY W. BOOZE, and JOHN W. GANTZER,
Petitioners

v.

THE STATE OF FLORIDA,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT OF THE STATE OF FLORIDA

Petitioners, Gary W. Booze and John W. Gantzer, respectfully pray that a Writ of Certiorari issue to review the judgments of the District Court of Appeal for the Second District of the State of Florida in these cases. The opinion of the District Court of Appeal in *State of Florida v Booze* is reported at 291 So. 2d. 262 and is appended hereto (A-7). The opinion of the District Court of Appeal in *State of Florida v Gantzer* is reported at 293 So. 2d. 107 and is appended hereto (A-15).

JURISDICTION

The District Court of Appeal entered its judgment in *State of Florida v Booze* on March 8, 1974 (A-7) and a hehearing was denied on April 3, 1974, (A-10). The District Court of Appeal entered its judgment in *State of Florida v Gantzer* on March 20, 1974 (A-15) and rehearing was denied on May 2, 1974 (A-16). The Supreme Court of Florida denied Certiorari in both cases on July 12, 1974 (A-11, 17). Jurisdiction of this Court is invoked under 28 U. S. C. A. 1257 (3).

QUESTION PRESENTED

Whether the Fourth Amendment requirement that a search warrant particularly describe the place or places to be searched and the property to be seized is satisfied by a search warrant which contains no description whatever of the place to be searched or the property to be seized but which does incorporate by reference an attached affidavit for search warrant containing a description of the place to be searched and the property to be seized.

CONSTITUTIONAL PROVISION INVOLVED

U. S. CONST. AMEND. IV, the pertinent portions of which are emphasized in italics here, reads in its entirety as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and *no warrants shall issue, but upon probable cause,* supported by oath or affirmation, *and particularly describing the place to be searched,* and the persons or things to be seized."

STATEMENT OF THE CASE

On April 5, 1973, the residence of petitioner, Gary W. Booze, was searched under the authority of a search warrant (A-1). This warrant contained no description at all of petitioner's residence nor did it command the seizure of any specific items. The warrant did, however, incorporate by reference the Affidavit for Search Warrant (A-2), which was stapled to the back of the Warrant. The affidavit (A-2) executed by a local law enforcement officer, contained a description of petitioner's residence as well as a description of contraband articles believed to be located in the residence. The search of the residence resulted in the seizure of marijuana and other contraband items and petitioner was charged with six violations of State Law.

The Federal Constitutional issue was first raised in the Trial Court. A Motion to Quash the warrant and suppress the evidence was filed on the ground that the warrant was insufficient on its face because of its failure to comply with the requirements of the Fourth Amendment. The Trial Court denied the Motion.

Petitioner entered a plea of nolo contendere, and was sentenced to a term of incarceration, upon an adjudication of guilt by the Court. He appealed to the District Court assigning as error the ruling of the lower court that the warrant was constitutionally sufficient.

The District Court affirmed the judgment and rendered an opinion (A-7) holding that a search warrant with no description of the place to be searched or items to be seized can be validated by an affidavit containing the

description of the premises and the property to be seized if the affidavit is incorporated by reference in and attached to the warrant. The basis of the decision is that a police officer armed with this type of warrant and affidavit could go unerringly to the right house and seize the right property (A-8).

The decision of the District Court of Appeals specifically referring to and interpreting the Fourth Amendment became final in Florida on July 12, 1974 when the Florida Supreme Court denied Certiorari (A-11).

A statement of the case as it pertains to petitioner, John W. Gantzer, is omitted here since the warrant (A-12), affidavit (A-13), judgment of the District Court of Appeal (A-15), and judgment of the Florida Supreme Court (A-17) are in all respects the same as those presented in petitioner, Booze's case.

REASONS FOR GRANTING THE WRIT

I

THE FLORIDA COURT HAS DECIDED A FEDERAL QUESTION OF SUBSTANCE IN SUCH A WAY PROBABLY NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT

This Court has never decided the precise question of whether a search warrant with no description can be cured by an affidavit containing the description where the affidavit is attached to the warrant and referred to in the warrant. The opinion of the District Court of Appeals herein sought to be reviewed answered the question

affirmatively and petitioners submit its judgment is probably not in accord with prior decisions of this Court.

The decision of the District Court is predicated on the assumption that this warrant is validated by the affidavit because it embraces all of the terms contained in the affidavit. The affidavit does not legalize the warrant by supplying missing information; however, actually the reverse is true. These warrants when read alone justify the search of any residence in the County and when stapled to the front of an affidavit prepared by a policeman, give him authority to execute what is in effect his own affidavit.

The procedure now sanctioned in Florida by virtue of these cases allows the affidavit to become the controlling document and the role of the magistrate is simply to perform the perfunctory task of signing a form to be affixed to the affidavit. Petitioners submit this procedure is not consistent with the holding of this Court in *Coolidge v New Hampshire* 403 U. S. 443 (1971), that a search warrant should be issued by a neutral and detached magistrate.

Petitioners are cognizant of the observation of this Court in *United States v Ventresca* 380 U. S. 102 (1965), that the commands of the Fourth Amendment, like all constitutional requirements, are practical and not abstract, but submit that the issue herein presented does not raise an abstract or hypertechnical analysis of a search warrant problem. The warrants in these cases do not present technical violations of the Fourth Amendment any more than the search of a residence without a warrant would be a technical violation or a harmless error on the ground that the search actually produced a seizure of contraband

items.

The holding of the District Court below, that the affidavit alone may contain the description, is contrary to the wording of the Fourth Amendment which provides in part:

> ". . . *no warrant shall issue, but upon probable cause,* supported by oath or affirmation. *and par-particularly describing the place to be searched* and the persons or things to be seized . . ." (Emphasis supplied)

This wording indicates that the description should be contained in the warrant. Petitioners submit the decision of the District Court is not in accord with prior rulings of this Court because in the area of particularity of search warrant descriptions the Court has taken a literal view of the Amendment, see *Stanford v Texas* 379 U. S. 476 (1965). Mr. Justice Stewart in that case in passing upon the words "particularly describing" contained in the Fourth Amendment, said at 481, "These words are precise and clear." Because the District Court in the instant cases failed to apply the precise and clear meaning intended by the Amendment, its decision is probably contrary to the views of this Court on this particular subject.

In *Aguilar v Texas* 378 U. S. 108 (1964), Mr. Justice Goldberg warned at 111:

> ". . . Although the reviewing court will pay substantial deference to judicial determinations of probable cause, the court must still insist that the magistrate perform his "neutral and detached"

function and not serve merely as a rubber stamp for the police . . ."

While *Aguilar* dealt with the sufficiency of probable cause allegations made to the magistrate and the instant case deals with the sufficiency of the description in the warrant, it is clear that the principle is applicable, and that the search warrant procedure now sanctioned in Florida by virtue of the cases presented herein, contains the same evil warned against by Mr. Justice Goldberg, ie., that policemen will control the issuance of search warrants.

II

THE DISTRICT COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The issue of incorporating by reference descriptions contained in the affidavit for search warrant, to cure defective descriptions in the warrant itself, and in some cases, such as the ones presented here to provide missing descriptions in the warrant, has become an important problem in the administration of American Criminal Justice. The decisions of the various states are not in agreement and a decision of this Court is necessary if the provisions of the Fourth Amendment are to be applied uniformly throughout the country.

The Supreme Court of Massachusetts recently held that a search warrant with a defective description can be cured

if it makes reference to the affidavit containing an adequate description even if the affidavit is not attached to, or incorporated in the warrant. *Commonwealth of Massachusetts v Wealth* 294 N. E. 2d. 860 (Mass. 1973), but an Arizona Court in the same year held the affidavit must be physically attached to the warrant in order to cure its defect, *State of Arizona v Drago* 509 P. 2d. 1051 (Ct. App. Ariz. 1973).

The rule in Texas holds that where the affidavit is attached to the warrant it may be used to aid the description found in the warrant, *Phenix v State of Texas* 488 S. W. 2d. 759 (Ct. App. Tex. 1973), and a similar rule can be found in the State of Maryland, see *Hignut v State of Maryland* 17 Md. App. 399, 303 A. 2d. 173 (Ct. App. Md. 1973). This version of the rule assumes that some description, however defective, already exists in the warrant itself. The Supreme Court of Michigan, however, has held that if the affidavit is incorporated and attached, no description is required in the warrant at all, *People of Michigan v Raines* 203 N. W. 77 (Mich. 1925).

Finally, the State of Illinois, in a case which is admittedly distinguishable on the facts, takes a dim view of the whole idea of incorporating search warrant descriptions by reference, see *People of Illinois v Staes* 235 N. E. 2d. 882 (App. Ct. Ill. 1968).

The question of the reasonablesness of a particular search must be determined on a case by case basis, and the question of probable cause is in many respects a factual question which must be determined with reference to each case, but petitioners suggest that the issue here requires

a determination by this Court, and a uniform application of that decision by the States. The question of whether a search warrant with no description of the place to be searched can be cured by an affidavit containing the description, incorporated by and attached to the warrant is a legal question. It is either constitutionally permissible under the Fourth Amendment, or it is not. It can not be applied one way in one state and another way in another state without violating the principle that the Fourth Amendment applies to the States.

Petitioners therefore respectfully submit that a decision and opinion of this Court would have an effect reaching far beyond its consequences to the immediate parties in the action.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Respectfully submitted,
Guillermo A. Ruiz and
Philip J. Padovano, of
RUIZ and PADOVANO
2950 First Avenue North
St. Petersburg, Florida
Counsel for Petitioners

SEARCH WARRANT

STATE OF FLORIDA
COUNTY OF PINELLAS

To the Sheriff and/or Deputy Sheriffs of Pinellas County, Florida or any police officer of the City of St. Petersburg, Pinellas County, Florida.

The above affidavit for search warrant coming on to be heard and the Court having examined the affiant under oath and having been satisfied that the facts as alleged do exist and that the law is being violated as alleged, a search warrant is hereby allowed and issued.

The affidavit for search warrant made by Officer George William Leake and Randy Rabe is hereby made a part of this search warrant and a copy is attached.

THESE PRESENTS THEREFORE are to command you with the necessary and proper assistance as the exigencies of the occasion may demand or require, either in the daytime or the nighttime and on any day of the week, including Sunday, in or on said premises, there to deligently search for the herein described property and if the same shall be found to seize same and to return to a court having jurisdiction to be used as evidence. You are further ordered to arrest any person found in possession of same and in the absence of such person to leave a copy of this warrant with an inventory of the property seized.

/s/ Robert E. Beach
Circut Judge
Pinellas County, Florida

AFFIDAVIT FOR SEARCH WARRANT

STATE OF FLORIDA

COUNTY OF PINELLAS

Before me, Robert E. Beach, Circuit Judge of the Sixth Judicial Circuit of Florida, in and for Pinellas County, personally appeared Officer George William Leake, a Police Officer of the City of St. Petersburg, Florida and Randy Rabe, residing at 1320 - 52nd Avenue Northeast, St. Petersburg, Florida, who, is the owner and resident of said dwelling house, who by me first being duly sworn depose and say that they believe and have good reason to believe that in a certain single story, single family dwelling, located on the northside of Coral Way South, St. Petersburg, Florida, facing south, being of masonary block construction, being brown in color with white trim around the front windows of said dwelling, said windows being on the southside of the house and being of Miami style windows and said windows being located directly east of the front door of said dwelling an immeiately below said windows, the lower portion of the house being constructed of natural colored stone; the front door being located approximately in the middle of said dwelling, on the southside of the dwelling and immediately to the west of said front door, being located a white garage door; said dwelling having the number 1345 in black letters affixed to the masonary block directly above the garage door; and affixed to and extending from the middle of the westside of said dwelling a chicken wire mesh type fence approximately four feet high extending to the west for a distance of approximately eight feet, said fence then extending in a northerly direction for approximately thirty feet and

then said fence extending in an easterly direction for approximately seventy-five to one hundred feet and then said fence extending in a southerly direction for approximately fifteen feet and then said fence extending in an easterly direction until it connects to and attached to the northeast corner of said dwelling, and having the address of 1345 Coral Way South, City of St. Petersburg, County of Pinellas, State of Florida, said premises thought to be under the custody and control of Gary W. Booze, and other persons whose names to the affiants are unknown, the laws concerning illegal possession of stolen property and burglary are being violated.

Affiant Randy Rabe's reasons for this belief are that on February 22, 1973, said affiant, Rabe, was the owner-occupant of the dwelling house located at 1320 - 52nd Avenue Northeast, St. Petersburg, Pinellas County, Florida, and on February 22, 1973, at approximately 1:00 p.m., said affiant, Rabe, secured said dwelling and departed for Miami, Florida. Affiant returned to said dwelling about 10:00 p.m. on February 25, 1973, and upon awakening about 10:00 a.m., the morning of February 26, 1973, discovered that the following personal property was missing McIntosh stereo Preamplific FM-AM tuner, model MX112, serial number 23S38, valued at $600.00, Sony stereo tape recorder, model TC630D, three head solid state, serial number 13709, valued at $375.00, Servo turn table, system, model PS1800A, walnut case, valued at $300.00, 700 watts phase Linear power amplifier, walnut case, serial number 1272-040, valued at $800.00, McIntosh MI 3 oscilloscope, no serial number available, valued at $350.00, total value of $2425.00.

Affiant gave no one permission to enter said dwelling

and gave no one permission to take said personal property/stereo equipment, from his residence. Affiant has been advised by his wife, Linda Rabe, that one Robert Josph Ryal, a 31 year old white male had been in Rabe's dwelling on approximately February 4, 1973, shortly after Rabe had purchased and installed said stereo equipment and that said Robert Joseph Ryal observed the stereo equipment in Rabe's dwelling at that time. Said Robert Joseph Ryal drives and/or owns a 1968 or 1969 gold Cadillac. At the time of the burglary and theft of said stereo equipment, Robert Joseph Ryal lived with a white male named Gary Booze in the vicinity of Gulfport, Pinellas County, Florida. At the present time, the said Gary Booze drives the above described gold Cadillac, and has been using the said Cadillac for approximately the last two months preceeding this date. Affiant, Rabe, has personally been investigating the burglary to his residence and theft of his stereo equipment. On April 5, 1973, at approximately 6:30 p.m., affiant, Rabe, went to the above described residence of Gary Booze at 1345 Coral Way South and went to the front door located on the southside of said dwelling and affiant, Rabe, looked through a convex type security viewer/mirror, located in the center of the door, approximately five feet, five inches from the bottom of said door. Affiant, Rabe, at this time, observed in the said dwelling against a wall opposite the said door, through which Rabe was looking, the stereo equipment of affiant that had been stolen from affiant's residence. Affiant, Rabe, could see his stereo equipment because a light was on inside the said dwelling. Affiant knows this property is his because stereo recording and listening has been a hobby of affiant's and affiant has owned and associated with this type of entertainment equipment for approximately five years. Affiant looked at and observed

this stereo equipment for approximately three minutes, which said equipment was located approximately fifteen feet away from where affiant was standing. Affiant further knows and recognized this equipment as his because the said equipment was purchased by the affiant separately and individually in order to have a custom designed entertainment unit and affiant personally organized and assembled the stereo system. Since purchasing the stereo system, the affiant continally used said system. This stereo equipment and system is unique because of the various different brands that compose the stereo system. The stereo equipment and system that affiant observed contained the exact same brands owned by the affiant.

Affiant George William Leake's reasons for the belief that the aforesaid laws of the State of Florida are being violated are that in his capacity as a police officer with the St. Petersburg Public Safety Agency he has had occasion to investigate the aforesaid burglary to the residence of Randy Rabe, at 1320 - 52nd Avenue Northeast. And during said investigation, said affiant, Leake, interviewed a witness who lives on the eastside of the burglarized residence and said witness advised affiant, Leake, that a 1968 or 1969 gold Cadillac was parked in the driveway of said burglarized residence for approximately one hour on Saturday, February 24, 1973. Upon additional investigation, affiant, Leake, determined from a vehicle registration check that a gold 1969 Cadillac Coupe DeVille is registered to one Robert Joseph Ryal. Affiant, Leake, further determined from the Florida Power and Light Corporation that one Gary W. Booze applied for and was responsible for electric service to the residence at 1345 Coral Way South, St. Petersburg, Florida, for which this search war-

rant is requested.

WHEREFORE, affiants pray that a search warrant be issued according to law commanding all and singular the Sheriff and/or Deputy Sheriffs, and any police officer of the City of St. Petersburg, Pinellas County, Florida, either in the daytime or the nighttime, with proper and necessary assistance, to search the herein described premises and seize as evidence the herein described illegally possessed stereo equipment/personal property in order that the evidence may be procured to be used in the prosecution of such person or persons found to have been previously in possession of same.

/s/ Randy Rabe

/s/ George W. Leake

In the District Court of Appeal of Florida Second District January Term, A.D. 1974

GARY W. BOOZE,	)	
	)	
Appellant,	)	CASE NOS. 73-830,
	)	73-831,
v.	)	73-832,
	)	73-833,
STATE OF FLORIDA,	)	and 73-834
	)	
Appellee.	)	

Opinion filed March 8, 1974

Appeal from the Circuit Court for Pinellas County;

Mark R. McGarry, Jr., Judge.

Guillermo A. Ruiz and Philip J. Padovano, St. Petersburg, for Appellant.

Robert L. Shevin, Attorney General, Tallahassee, and Baya Harrison III, Assistant Attorney General, Tampa, for Appellee.

MANN, Chief Judge.

An admittedly sufficient affidavit resulted in the issuance of a search warrant in which the description of the premises to be searched and the property to be seized were not stated above the judge's signature. The warrant did state, however, that "the affidavit for search warrant made by Officer George William Leake and Randy Rabe is hereby made a part of this search warrant and a copy is attached."

We hold this a good warrant. Incorporation by reference is a perfectly acceptable means of avoiding the repetition of language set forth elsewhere. Any officer armed with this warrant, to which the affidavit was attached and, by the issuing judge, made a part of the warrant, could go unerringly to the property and seize the property particularly described. Joyner v. City of Lakeland, Fla.1956, 90 So.2d 118.

We find nothing in the authorities cited by the appellant which should encourage belief in this appeal's merit. Bloom v. State, Fla.App.4th 1973, 283 So.2d 134, invalidated a warrant directing seizure of "stolen property received and concealed upon the aforesaid premises in violation of Section 811.16, Florida Statutes," which cannot be said to describe particularly the property to be seized, as the Constitutions require. U.S. Const. Amend. IV; Fla. Const.Art. I, §12 One page beyond the language quoted in the appellant's brief we find the ground of our affirmance here:

> "Some decisions, however, have permitted an affidavit to cure a defective search warrant where the affidavit and the search warrant are such that they can be reasonably said to constitute one document. Two requirements must be satisfied to reach this result: first, the affidavit and search warrant must be physically connected so that they constitute one document; and second, the search warrant must expressly refer to the affidavit and incorporate it by reference using suitable words of reference."

We agree with the statement in U.S. v. Kaye, D.C. Cir. 1970, 432 F.2d 647, at 649 to the effect that "it is the description in the search warrant, not the language of the

affidavit, which determines the place to be searched." What the appellant overlooks is that here the warrant incorporates the affidavit and they are physically attached. Moore v. U.S., D.C. Cir. 1972, 461 F.2d 1236.

It is important to note the requirement that the affidavit be attached to and made a part of the warrant. As Judge Leventhal said in *Moore, supra,* "The requirement that the affidavit be attached to or inserted in the warrant is not a mere formality. It makes the affidavit of probable cause immediately available to the person whose premises are entered, and explains to him at the outset the reason for this intrusion on his privacy. And it avoids any possible claim or suspicion by the citizen involved that the affidavit later located in the official file was inserted after the fact of the search."

While we find no legal fault with the procedure followed in this case, it might be well if each page of a multi-page document were initialed or signed by the judge issuing the warrant. The procedure used here has at least the virtue of eliminating some typing, and with appropriate regard to the risk of questions which might later be raised as to the authenticity of the entire affidavit-embracing warrant, may be a useful pattern of procedure. We find it legally and constitutionally adequate on the record before us.

The contraband seized, on the basis of which these charges were brought, was found in the course of search for particularly described property and did not result from an unlawful extension of the scope of the search.

HOBSON and GRIMES, JJ., Concur.

Affirmed

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

In and for the Second District

January Term, A.D. 1974

Wednesday, April 3, 1974

GARY W. BOOZE,	)	
Appellant,	)	
v.	)	CASE NO. 73-830
	)	73-831
STATE OF FLORIDA,	)	73-832
	)	73-833
Appellee.	)	73-834

Counsel for Appellant, having filed in this cause a Petition for Rehearing and the same having been considered by the Court, it is

ORDERED that the said Petition be and the same is hereby denied.

/s/ William Haddad

SUPREME COURT OF FLORIDA

July Term, A.D. 1974

Friday, July 12, 1974

GARY W. BOOZE,	)	CASE NO. 45,484
	)	DISTRICT COURT
Petitioner,	)	OF APPEAL,
	)	SECOND
vs.	)	DISTRICT
	)	73-830
STATE OF FLORIDA,	)	73-831
	)	73-832
Respondent.	)	73-833
	)	73-834
	)	

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, ERVIN, DEKLE and OVERTON, JJ., concur

Clerk Supreme Court
/s/ Sid J. White

In the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County State of Florida

SEARCH WARRANT

TO THE Sheriff and/or Deputy Sheriffs of Pinellas County, Florida or any police officer of the City of St. Petersburg, Pinellas County, Florida.

The above affidavit for search warrant coming on to be heard and the court having examined the affiant under oath and having been satisfied that the facts as alleged do exist and that the law is being violated as alleged, a search warrant is hereby allowed and issued.

The affidavit for search made by T. W. Watson, is hereby made a part of this search warrant and a copy is attached.

THESE PRESENTS THEREFORE are to command you with the necessary and proper assistance as the exigencies of the occasion may demand or require, either in the daytime or the nighttime and on any day of the week, including Sunday, in or on said premises, there to diligently search for the herein described property and if the same shall be found to seize same and to return to a court having jurisdiction to be used as evidence. You are further ordered to arrest any person found in possession of same and in the absence of such person to leave a copy of this warrant with an inventory of the property seized.

DONE and ordered this 23rd day of January, 1973.

/s/ William A. Patterson
Circuit Judge
Pinellas County, Florida

In the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County State of Florida

AFFIDAVIT FOR SEARCH WARRANT

BEFORE ME, W. A. PATTERSON, Circuit Judge of the Sixth Judicial Circuit in and for Pinellas County, Florida, personally appeared T. W. Watson of the St. Petersburg Department of Public Safety, who being by me first duly sworn deposes and says that he believes and has good reason to believe that in a certain one story, single family residence of masonry construction, painted green with white awnings and white trim, and a shingled roof; said residence facing east on the west side of Bradshaw Lane North, having silver colored numerals 1740 affixed to a palm tree in front of the residence; said residence having an aluminum screen door opening out with a natural colored wooden door opening in as a means of entrance into the residence facing north; said residence having the address of 1740 Bradshaw Lane North, City of St. Petersburg, County of Pinellas, State of Florida, that the laws of the State of Florida concerning the sale and possession of dangerous drugs are being violated.

Affiant's reasons for this belief are that in his capacity as Detective of the St. Petersburg Department of Public Safety, he conducted an investigation on Monday, 15 January 1973, the affiant was directed by Larry Alan Papolas, to the previously described residence. That affiant observed Larry Alan Papolas enter the previously described residence. Approximately five minutes later, the

affiant observed Larry Alan Papolas return directly to the affiant at which time having possession of a certain substance. The affiant who is experienced as a narcotics detective, examined the substance and recognized it as cannabis. The affiant had the residence under surveillance during the entire time Larry Alan Papolas was within the above described residence, and Larry Alan Papolas had no opportunity to obtain the above described cannabis from any other location. The affiant received from Larry Alan Papolas the cannabis and maintained it as evidence.

WHEREFORE, the affiant prays that a search warrant be issued according to law commanding all and singular the Sheriff and/or Deputy Sheriffs, and any police officer of the City of St. Petersburg, Pinellas County, Florida, either in the daytime or the nighttime, on any day of the week, including Sunday, with proper and necessary assistance, to search the herein described premises and seize as evidence the herein described illegally possessed drugs in order that the evidence may be procured to be used in the prosecution of such person or persons found to have been previously in possession of same.

SWORN to and subscribed before me this
23rd day of January, A.D., 1973.

/s/ T. W. Watson

In the District Court of Appeal of Florida Second District

January Term, A.D. 1974

STATE OF FLORIDA,

Appellee.

v.

JOHN W. GANTZER,

Appellant,

CASE NO. 73-612

Opinion filed March 20, 1974

Appeal from the Circuit Court for Pinellas County; Ben F. Overton, Judge.

Philip J. Padovano of the Law Office of Guillermo A. Ruiz, St. Petersburg, for Appellant

Robert L. Shevin, Attorney General, Tallahassee, and Richard G. Pippinger, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed on the authority of Booze v. State, Fla.App. 2nd, 1974, Case Nos. 73-830, 73-831, 73-832, 73-833 and 73-834 Opinion filed March 8, 1974.

MANN, C.J., and HOBSON and GKIMES, J.J. CONCUR.

In the District Court of Appeal of the State of Florida in and for the Second District

Thursday, May 2, 1974

JOHN W. GANTZER,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NO. 73-612
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	

Counsel for appellant having filed in this cause a Petition for Rehearing and the same having been considered by the Court, it is

ORDERED that the said petition be and the same is hereby denied.

/s/ William A. Haddad
Clerk, District Court of Appeal
Second District

SUPREME COURT OF FLORIDA

July Term, A.D. 1974

Friday, July 12, 1974

JOHN W. GANTZER,	)	
Petitioner,	)	CASE NO. 45,483
	)	DISTRICT COURT
vs.	)	OF APPEAL,
	)	SECOND
STATE OF FLORIDA,	)	DISTRICT
	)	73-612
Respondent.	)	

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, ERVIN, DEKLE and OVERTON, JJ., concur